

WM. G. FLORENCE

28 June 1972

NOTES ON COURT DISCUSSION

OF 18 USC 793, 28 JUN 1972

A. "NOT ENTITLED TO."

1. The Prosecution position continued to reflect the view that Executive Order 10501 is the standard for determining dissemination of "793" information, including "not entitled to receive."

2. The Prosecution continued to misrepresent E.O. 10501 dissemination criteria as "need-to-know" and "clearance." The Judge has never challenged that misrepresentation of section 7 of the E.O., which could more accurately be stated as "need-to-disclose" and "trustworthy." (?)

3. The judge did not raise the question of NON-CLASSIFIED information during the

"not entitled to" discussion, but did raise the question during the "Reason to Believe" discussion.

COMMENT:

a. Mr. Nisson said that "793" is not limited to matters that are "classified," and agreed that if national defense information is not classified, E.O. 10501 would not apply.

b. The DoD position has always been that Non-classified information relating to the national defense could be subject to "793."

c. Privately owned information which is not subject to E.O. 10501 classification, could be subject to "793" (especially private inventions held in secrecy pursuant to ~~§~~ 35 U.S.C. 181-184, the publication or disclosure

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of which might be detrimental to the national security.)

4. Mr. Nisson seems to have contradicted himself in stating at the outset that E.O. 10501 is the "793" standard and later indicating that "793" could apply to non-E.O. 10501 information.

B. REASON TO BELIEVE.

5. From an administrative viewpoint, the only concern that DoD ever had, before or ~~after~~ promulgation of Executive Orders on classification, was for information.

6. DoD is not and could not be prepared to support the view that a document-marking indicates whether a crime

has been committed.
DoD has not only admitted
but has insisted before
Congress that manpower
is not available to
cancel classification
markings on documents
that have no bearing
on the national defense.

C. HEINIE

7. Mr. Nissen has often
used the word "Protection"
to help express his
view of an evil act.
He suggests that when
something is taken from
a status of "Protection"
any subsequent disclosure
is evil. No one has
challenged him on what
he means by "protection."
If he is talking about
a classification mark
being "protection," he

safes?
guards?

is certainly mistaken.
Classification markings
them selves are no
protection whatever.
Even TOP SECRET marked
material is distributed
all over the world.

D. CHOICE OF 793 (e)

8. If it becomes necessary
at any time to use the
security classification pro-
cedures in application
to the Vietnam Study,
it would seem that the
Defense could certainly
refute any charge of
"Unauthorized" possession
for any period of time.
My memorandum of 5 March
shows that possession WAS AUTHORIZED
during all periods of time.

Wm G. Florence